



Paper No. 6

Salvatore J. Abbruzzese, Esq.
HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset NY 11791

COPY MAILED

FEB 13 2002

In re Application of
Dinh, Gupta, and Drane
Application No. 09/899,862
Filed: July 6, 2001
Attorney Docket No. 588-516 (T&B1632)
For: HANGER BAR ASSEMBLY

OFFICE OF PETITIONS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed January 7, 2002.

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)." Failure to respond will result in abandonment of the application. Extensions of time are available and will be governed by 37 CFR 1.136(a).

The above-cited application was filed on July 6, 2001, without a declaration compliant with 37 CFR 1.63 executed by all named inventors. A "Notice of Missing Parts of Nonprovisional Application" (the "Notice") was mailed on August 23, 2001. The Notice required the payment of outstanding filing and claim fees, payment of a surcharge of \$130.00 because of the late filing of the declaration, and the filing of a proper declaration executed by all named inventors. On January 7, 2002 (certificate of mailing dated October 24, 2001), petitioner filed the instant petition along with a request for an extension of time within the first month pursuant to 37 CFR 1.136(a), a declaration executed by inventors Dinh and Drane, and remitted the \$130.00 surcharge.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and,
- (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) as set forth above.

As to item (1), 37 CFR 1.47(a) provides that an application for patent may be made by the other inventors on behalf of themselves and the non-signing inventor if, among other requirements, proof of the pertinent facts surrounding the alleged refusal is provided. Section 409.03(d) of the *Manual of Patent Examining Procedure* (the "MPEP") provides guidance as to what will suffice as sufficient proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers. This section states, in pertinent part, as follows:

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventors' attorney.

It is noted that petitioner made attempts to present inventor Gupta with a complete copy of the application papers by sending them to the last known address of Mr. Gupta and to what was believed to be the last known business address of Mr. Gupta. It is further noted that petitioner made an effort to locate Mr. Gupta by contacting his last known employer, however; it cannot be said that petitioner has exhausted all reasonable means of locating Mr. Gupta. The declaration attested to by Jill Pierce relative to the efforts to locate inventor Gupta does not indicate that petitioner attempted to locate inventor Gupta by conducting searches of regional telephone books, the Internet, or other databases. A preliminary search conducted by the Office of Petitions of the Internet revealed five cites listing a "Harsh Gupta." While it has not been determined that any of those persons listed are the Harsh Gupta that is the subject of this petition, the fact such information was readily available, but not discovered by petitioner, suggests that additional efforts should be undertaken by petitioner to locate inventor Gupta. Petitioner should provide the results of any search of available databases conducted with any "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" filed.

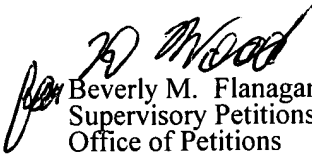
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6919
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy